BAIL SLIP

The Appellant/Accused was directed to be released on bail by the order of this Court dated 11.12.2000 and made in Crl.M.P.No.8701 of 2000 in C.A.No.509 of 1999 (S.C.No.186 of 1998 on the file of the Principal Sessions Judge, Vellore).

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
and
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

Criminal Appeal No. 509 of 1999

Subash ... Appellant (Accused)

-vs-

State represented by
Inspector of Police,
Vellore Taluk Police Station,
Vellore District.
(Cr.No.337/95) .. Respondent (Complainant)

Prayer: Appeal under Section 374(2) of the Cr.P.C. against the judgment passed by the learned Principal and Sessions Judge, Vellore District at Vellore in S.C.No.186/1998 dated 14.6.1999. (PRC.No.11/96, on the file of the Court of the Judicial Magistrate No.I, Vellore).

* * * * *

For Appellant : Mr.V.Parthiban for
Mr.T.S.Kannaiyan

For Respondent : Mr.S.Jayakumar
Addl. Public Prosecutor

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

J U D G M E N T

(Judgment of the Court was delivered by M.CHOCKALINGAM, J)

The sole accused in a case of murder, on being found guilty as per the charge and awarded life imprisonment along with the fine by the Court of Principal and Sessions Judge, Vellore in Sessions Case No.186/1998, has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal are as follows:

(a) P.W.1 is the son of the deceased. P.W.2 is the wife of the deceased. P.W.3 is the nephew of the deceased. The accused is the brother of one Amala. All were residing at Veppampattu Village, within the limits of Vellore Taluk Police Station. Amala, the sister of the accused, and P.W.1 fell in love with each other. Subsequently P.W.1 joined the police force. He came to his native place on leave, on 22.4.1995. Amala insisted him to marry her; but, he refused. On 12.5.1995 at about 5 p.m. when P.Ws. 1 to 3 and the deceased were all chatting in their house, Amala came there and insisted P.W.1 to marry her. The deceased intervened and told her that P.W.1 would not marry her and asked her to quit the place immediately. At that time, the accused came there and stabbed the deceased stating that he was responsible for ruining the life of his sister, Amala. When the accused attempted to escape, P.W.1 assaulted him. In the said course, P.W.3 also sustained injuries. Thereafter, the accused fled away from the scene of occurrence. P.W.1 took his father to the Government Hospital, Vellore. When P.W.13, the Sub-Inspector of Police, attached to Vellore Taluk Police Station, was on duty, at about 6.15 p.m., the accused appeared before him and gave a statement which was registered in P.I.R.No.66/1995 and the same was marked as Ex.P.20. When the deceased was taken to Hospital by P.W.1, P.W.8, the Doctor, who was on duty, examined him at 6.50 p.m. and declared him dead. The death intimation is Ex.P7.

(b) Thereafter, P.W.1 went to Vellore Taluk Police Station and gave a complaint to P.W.12 the Sub Inspector of Police, who was on duty that time. Ex.P1 is the complaint given by P.W.1., on the strength of which a case was registered in Crime No.337/1995 under Section 302 I.P.C. at 7.45 p.m. The printed F.I.R. was despatched to the court.

3. The Investigating Officer, P.W.14, took up investigation, proceeded to the scene of occurrence, made an inspection in the presence of the witnesses and prepared Ex.P.2, observation mahazar and Ex.P.21, rough sketch. The scene of occurrence was caused to be

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

photographed through P.W.6 a Photographer, and the photographs were also marked as M.O.4 series along with the negatives M.O.5 series. The Investigating Officer recovered M.O.2, blood stained earth, and M.O.3, sample earth under a mahazar, Ex.P3. The Investigating Officer conducted inquest on the dead body of Aruldass in the presence of witnesses and panchayatdars and prepared Ex.P.22 the Inquest report. On a memo, P.W.7, the Doctor, attached to the Government Hospital, Vellore, examined P.W.3 and gave the wound certificate under Ex.P.6.

4. Pursuant to the requisition of the Investigating Officer, P.W.9, the doctor, attached to the Government Hospital, Vellore conducted autopsy on the dead body of Aruldass and found the following injuries.

> "1. Incised wound 3 ½ cm x 2 ½ cm left infra mammary region at the level of 8th ribs in lobes shape, eliptical in shape entering down. Vertically as linear abration for 3 ½ cm on the outrech of chest wall and into the left ventricle of the Heart. An incised wound 3 cm x 2 ½ cm in the interior aspect of the left ventricle, entering in to the chambers of left ventricle of the Heart.
>
> 2. (NC) linear abrasion 10 cm long extending from the left side of chest lateral aspect from the anterior axillary line at the level of 9th rib down. Medially (N.C.) left hypochondrium, teeth 7654321/ 12345678
> 87654321/ 12345678
> all internal organs are pale. Hyoid bone intact. Chest No fracture ribs. 300 m.l of blood present in the left plural cavity. Skull, spleen, pelvic No fracture."

The Doctor issued the post-mortem certificate, Ex.P.10 wherein he has opined that the deceased died out of shock and haemorrhage.

5. On 14.5.1995, P.W.14, Inspector of Police (In-charge) Vellore Taluk Police Station, arrested the accused. He gave a confessional statement and the same was recorded. The admissible part is marked as Ex.P.4. Consequent upon the confessional statement, the accused produced M.O.1 knife which was recovered under Ex.P5 mahazar. The accused was also medically examined by P.W.8 the Doctor, attached to the Government Hospital, Vellore. A copy of the accident register is marked as Ex.P8 showing the injuries sustained by the accused. All the material objects recovered from the place of occurrence, from the dead body and the M.O.1 knife recovered pursuant to the confessional statement of the accused, were all despatched to the Court along with a requisition to subject them to chemical analysis, pursuant to which Ex.P7, chemical analyst's report and Ex.P8 serologist's report were

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

received by the Court. On completion of the investigation, P.W.15, the Inspector of Police, filed the final report before the Court and the case was committed to the Court of Sessions and necessary charges were framed.

6. In order to substantiate the charges levelled against the appellant/accused, the prosecution marched 15 witnesses and marked 22 exhibits and 10 material objects. On completion of the evidence on the side of the prosecution, the appellant/accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. The appellant/accused denied them as false. No defence witnesses were examined. The trial Court, after hearing the arguments advanced by both sides and on scrutiny of the materials available, ultimately, found the appellant/accused guilty of the offence under Section 302 I.P.C. and awarded the punishment referred to above, while acquitting the other charge under Section 324 I.P.C. Aggrieved by the same, the appellant/accused has broughtforth this appeal.

7. Learned counsel appearing for the appellant interalia, made the following submissions.

The prosecution in order to substantiate the charges levelled against the accused relied on the direct evidence adduced through P.Ws.1 to 3 who according to the prosecution are eye-witnesses. On scrutiny of their evidence, it would clearly reveal that the entire evidence is discrepant. According to P.W.1, it was only one person who attacked his father; but, according to P.Ws.2 and 3, four persons attacked the deceased. Thus, it is highly doubtful whether these witnesses were present at the time of occurrence. Apart from that, the prosecution has not explained about the injuries sustained by the appellant/accused. It was the accused who first went to the police station and gave a report against the deceased and his family members. Though the same was treated as a petition, no proper investigation was taken up. Added further learned counsel that the accused was also taken to the hospital for medical examination. Though the prosecution has brought forth the copy of the accident register, wherein the injuries sustained by the accused were found, they were not properly explained and apart from that, the confessional statement alleged to have been given by the accused and the consequent recovery of M.O.1 knife were all subsequent introduction to shape the case of the prosecution. The lower Court without considering the same, accepted the case of the prosecution, finding the accused guilty of the offence beyond reasonable doubt. The lower Court should have given the benefit of doubt to the accused and should have acquitted him, but failed to do so. Hence, the Court has to consider the circumstances of the case and acquit the accused.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. The Court heard the learned counsel appearing for the State on the above contentions.

9. It is not in controversy that Aruldass, father of P.W.1, died out of homicidal violence. The prosecution has not only relied on the direct evidence of P.Ws.1 to 3 but also relied on the medical evidence adduced through P.W.9, the doctor who conducted the post-mortem, and the post-mortem certificate Ex.P.10 issued by him. In the instant case, the accused never questioned the said fact either before the trial Court or before this Court and hence, it could be safely recorded that the deceased died on account of homicidal violence.

10. In order to prove the case that it was the accused who attacked Aruldass at the time of occurrence, the prosecution has examined three witnesses, P.Ws. 1 to 3. It is true P.Ws.1 to 3 are close relatives. Before accepting the evidence of the close relatives, care and caution must be exercised on the evidence by the Court. This Court has exercised full care and caution and made a thorough scrutiny of the evidence of P.Ws.1 to 3. It is settled principle of law that the Court should look into the evidence not on the quantity, but on the quality. In the instant case, P.W.1 has spoken to the fact that the accused came to the house of the deceased at the time of occurrence along with Amala and insisted P.W.1 to marry her, and it was the deceased who answered her that P.W.1 would not marry her, and at that juncture, the accused stabbed the deceased. All these three witnesses have clearly spoken to the above said fact. On scrutiny of the evidence in its entirety, the Court is of the considered opinion that the evidence of P.Ws.1 to 3 are natural, cogent, convincing and acceptable and the lower Court has no impediment except to accept the evidence and rightly too. The contention that the injuries sustained by the accused were not properly explained by the prosecution cannot be countenanced by this Court for the simple reason that a perusal of Ex.P.8, the copy of the accident register in which the injuries sustained by the accused are narrated, would clearly indicate that the injuries are superfluous in nature, and hence, this Court cannot accept the case of the prosecution otherwise. As regards the third contention that the appellant/accused first gave a complaint against the deceased and his family members and no investigation was taken up therein, it is pertinent to point out that the Investigating Officer has categorically spoken to the fact that the accused came to the police station and gave a report and the same was treated as a petition and on investigation, it was found that it was only a ruse in order to escape from the clutches of law. Apart from that, it is evident from the evidence adduced and on the totality of the circumstances that it was the appellant/accused who went to the house of the deceased and caused the death of Aruldass within a short while. Hence, the act of the accused would fall within the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

ambit of murder and thus, the lower Court was perfectly correct in finding the accused guilty of the offence of murder and in awarding him life imprisonment. This Court does not find any illegality or infirmity in the findings of the lower Court.

11. The trial Judge was justified in convicting the appellant/accused and therefore, the conviction and the sentence imposed on him under Section 302 I.P.C. are confirmed. Therefore, the appeal fails and the same is dismissed. It is reported that the appellant/accused is on bail. The Sessions Judge shall take steps to commit him to prison to undergo the remaining period of sentence imposed upon him.

25.07.2005

vsi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Sessions Sessions Judge,
   Vellore District, Vellore .

2. -do- The Judicial Magistrate I, Vellore.

3. -do The Chief Judicial Magistrate, Vellore.

4. The District Collector, Vellore,

5. The Director general of Police, Mylapore, Chennai.

6. The Superintendent of Police, Central Prison, Vellore.

7. The Inspector of Police, Vellore Taluk Police station, Vellore.

8. The Public Prosecutor, Chennai.

1 cc to Mr.T.S.Kannaiyan, Advocate, SR.30651

ps (co)

dv Crl.A.No.509 of 1999

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/